

ESTTA Tracking number: **ESTTA298264**

Filing date: **07/30/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91180742
Party	Defendant Krush Global Limited
Correspondence Address	William C. Wright Epstein Drangel Bazerman & James, LLP 60 East 42nd Street, Suite 820 New York, NY 10165 UNITED STATES wwright@ipcounselors.com,jdrangel@ipcounselors.com
Submission	Other Motions/Papers
Filer's Name	William C. Wright
Filer's e-mail	mail@ipcounselors.com
Signature	/William C. Wright/
Date	07/30/2009
Attachments	certserv.pdf ( 1 page )(13287 bytes ) supwrighttrialdec.pdf ( 41 pages )(833917 bytes ) learmondstip.pdf ( 1 page )(24327 bytes ) trialdecstip.pdf ( 2 pages )(48596 bytes ) trialdeccross.pdf ( 2 pages )(46004 bytes )



**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the following

- Trial Declaration on Cross Examination of William C. Wright
- Supplemental Trial Declaration of William C. Wright
- Stipulation to take Deposition of James Learmond Outside Applicant's Testimony Period
- Stipulation regarding Submission of Declaration in Lieu of Cross Examination and Supplemental Trial Declaration of William C. Wright

was served by e-mail, on this 30<sup>th</sup> day of July, 2009, upon Opposer/Petitioner counsel at:

Laura Popp-Rosenberg  
Barbara A. Solomon  
FROSS ZELNICK LEHRMAN & ZISSU, P.C.  
866 United Nations Plaza  
New York, New York 10017

New York, New York

By: /s/ Jason M. Drangel  
Jason M. Drangel



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

-----X	X	
DR PEPPER/SEVEN UP, INC.	:	
	:	
Opposer/Petitioner,	:	
	:	
v.	:	Consolidated Proceedings
	:	Opposition No. 91180742
	:	Cancellation No. 92048446
KRUSH GLOBAL LIMITED,	:	
	:	
Applicant/Registrant	:	
	:	
-----X	X	

**SUPPLEMENTAL TRIAL DECLARATION OF WILLIAM C. WRIGHT**

**WILLIAM C. WRIGHT declares and states as follows:**

1. I am an attorney with the law firm of Epstein Drangel Bazerman & James, LLP, located at 60 East 42<sup>nd</sup> Street, Suite 820, New York, New York 10165. I am admitted to practice in the State of New York as well as the United States District Court for the Southern and Eastern Districts of New York.
2. Accompanying this declaration as **Exhibits 1 & 2** are articles downloaded from the Internet on December 8, 2008.
3. Accompanying this declaration as **Exhibit 3** are portions of a pdf document downloaded from Opposer's website [drpeppersnapplegroup.com] in December, 2008.
4. Accompanying this declaration as **Exhibit 4** is a page from Opposer's website [drpeppersnapplegroup.com] downloaded from the Internet on December 9, 2008.
5. Accompanying this declaration as **Exhibit 5** are pages downloaded from Opposer's website [drpeppersnapplegroup.com] on December 9, 2008.



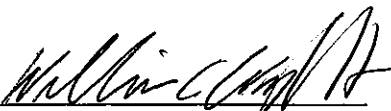
6. Accompanying this declaration as **Exhibit 6** are portions of a pdf document downloaded from Opposer's website [drpeppersnapplegroup.com] in December 2008 .
7. Accompanying this declaration as **Exhibit 7** is a page downloaded from Opposer's website [drpeppersnapplegroup.com] in December, 2008.
8. Accompanying this declaration as **Exhibit 8** is a page downloaded from Opposer's website [drpeppersnapplegroup.com] on December 9, 2008.
9. Attached as **Exhibit 9** are true and correct copies of sample images downloaded from the Internet in December 2008.
10. Attached as **Exhibit 10** is evidence I downloaded form the Internet (home page of crush29.com).
11. Attached as **Exhibit 11** is a copy of the U.S. Registration No. 3,269,628 for CRUSH 29. The copy of the registration was downloaded from the USPTO.gov website.

I declare under the penalty of perjury, that the foregoing is true and correct.

Dated:

7/30/09

By:

  
William C. Wright



# **EXHIBIT 1**





FACTOID # 77: At least 9 out of 10 Nigerians attend church regularly. Only 4 out of 10 Americans claim to do so.

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Looking for drinks  
recipes? We're your  
recipes guide!  
TheSecretIngredients.co  
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Programs.  
WashingtonPost.com

Find Coca Cola Products  
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Cola

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## Encyclopedia > Orange soda

The term **orange drink** (not to be confused with **orange soft drinks**; see below) refers to a sweet, sugary drink named for its orange color. Typically such beverages contain little to no orange juice and are not much more than water, sugar, flavor, coloring, and additives, sometimes in that order. As such, they are very low in nutritional value. Because orange drinks can be confused with orange juice, the U.S. government requires orange drinks, as well as other beverages whose names allude to fruit products, to state the percentage of juice contained above the "Nutrition Facts" label.

Popular orange drinks include Sunny Delight, Tang, and orange squash. Orange Julius is a mixture of orange drink, a dairy product, and raw egg (the recipe is "secret"), sold at Orange Julius stands in malls and similar venues. There is also a product named Orange Drink and marketed by the Dairy Maid company on the Caribbean island of Nassau.

## Orange soft drinks

**Orange soft drinks** (called **orangeade** in UK and **orange pop** or **orange soda** in certain regions of the US) are carbonated orange drinks. One which does include real orange juice (11%) and orange pulp is Orangina.

Orange soft drinks (especially those without orange juice) often contain very high levels of sodium benzoate, and this often imparts a slight metallic taste to the beverage. Other additives commonly found in orange soft drinks



[www.worldwinner.com/](http://www.worldwinner.com/)

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**I did! With no dieting or exercise!  
Read my story and see how.**



OCN  
NEWS

WSN

abc

CNN

[SmartDietInfo.com](http://SmartDietInfo.com)

Ads by Google



include rosin and sodium hexametaphosphate.

### List of orange soft drinks

- Fanta
- Mirinda Orange
- Nehi
- Orange Crush
- Orangina
- Slice
- Sunkist
- Tango

### See also

- Bill Hicks - had a comedy routine about an advertisement for an orange drink.

Categories: Beverages

#### COMMENTARY

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Your name

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# **EXHIBIT 2**



# Orange soft drink

From Wikipedia, the free encyclopedia  
(Redirected from Orangeade)

**Orange soft drinks** (called **orangeade** in UK, **orange soft drink** in Australia and **orange soda** or **orange pop** in certain regions of the US) are carbonated orange drinks. One which does include real orange juice (11%) and orange pulp is Orangina.

(Note that the phrase 'orange soft drink' in the UK is associated mostly with still 'orange squash' and that the carbonated drink is always 'orangeade' or colloquially 'fizzy orange'.)

Orange soft drinks (especially those without orange juice) often contain very high levels of sodium benzoate, and this often imparts a slight metallic taste to the beverage. Other additives commonly found in orange soft drinks include rosin and sodium hexametaphosphate.

*Orangeade* first appeared as a variety of carbonated drink provided in soda fountains in American drugstores in the late nineteenth century, brands including Miner's and Lash's. A recipe for home made Orangeade appears in editions of Fannie Farmer's cookbook.

## Contents

- 1 List of orange soft drinks
- 2 In Popular Culture
- 3 See also
- 4 External links

## List of orange soft drinks

- Aranciata from San Pellegrino
- Celeste soda orange soda
- Cplus orange soda (Canada)
- Dr. Brown's orange soda
- Fanta
- Faygo
- Jarritos, Barrilitos and other Mexican soft drink brands make orange or mandarina flavored soda.
- Lorina
- Mirinda Orange
- Minute Maid Valencia Orange orange soda (bottled by Coca-Cola)
- Nehi
- Orange Crush
- Orange Dream (made by Sprecher Brewery)
- Orangette
- Mountain Dew LiveWire (made by Pepsi)
- Naranjada (made by Postobon in Colombia)
- Orangina
- Schin Laranja (Orange soda bottled by Schincariol in Brazil)



- Slice
- Stewart's Orange'n Cream
- Sunkist
- Tango
- Tropicana orange soda (bottled by PepsiCo)
- Yedigün

## In Popular Culture

The Kel character in the Nickelodeon TV show, *Kenan and Kel*, was addicted to the drink and had it in nearly every episode. In one attempt, Kel tried unsuccessfully to avoid drinking the beverage for a week.

## See also

- Orange drink
- Orange juice
- Orange (fruit)
- Kenan & Kel

## External links

- Miner's Orangeade 5c dispenser
- Traditional drugstore orangeade was still available in 1996 from one pharmacy in North Carolina.

Retrieved from "[http://en.wikipedia.org/wiki/Orange\\_soft\\_drink](http://en.wikipedia.org/wiki/Orange_soft_drink)"

Categories: Non-alcoholic beverages | Orange sodas

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# **EXHIBIT 3**





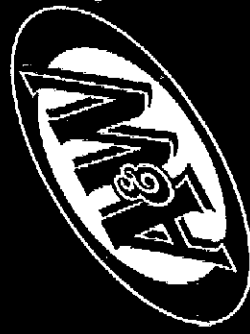
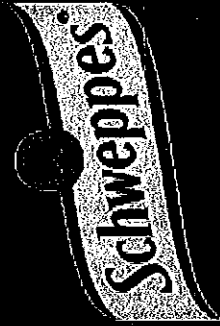
# Investor Meeting

New York

May 1, 2008

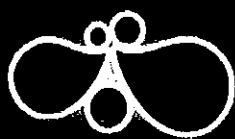


# Portfolio of Powerful Brands

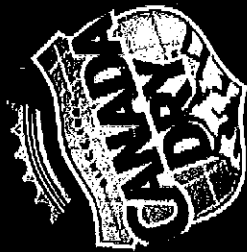




# Ranked #1 or #2 In Their Categories



#1



#1



#1



#1



#1



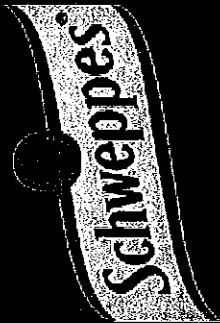
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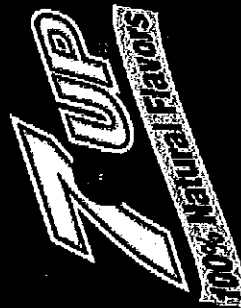
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#1



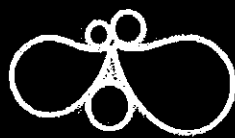
#2



#2




# #1 Flavored Company in the US




Rank    Non-Cola Brands    2007    \$ share


6 of Top 10  
Flavored  
CSDs

1    Mountain Dew    22.7


2        16.5

3    Sprite    10.3

4        4.6

5        3.6

6    Sierra Mist    3.2

7        3.0

8        2.0

9    Fanta    1.5

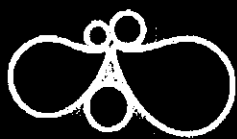
10        1.3

#1 Flavored  
CSD  
Company

Source: Nielsen



# With Strong Brand Equities



## Brand Equity Scores Vs Ipsos Norm

CSDs

NCBS

195

201

177

162

160

136

109

97

72



Sauce Juice

Source: IPSOS Tracker 2007



# **EXHIBIT 4**



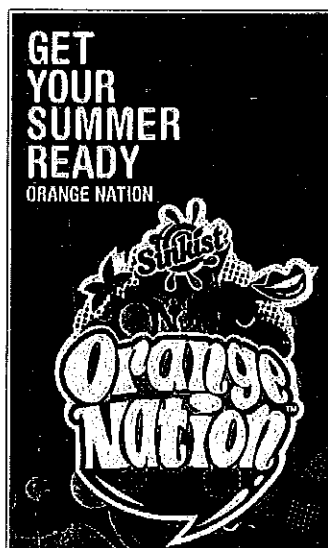
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## Our Brands

## Sunkist

Choose your brand: 

### THE ORIGINATION OF AN ORANGE NATION

For more on Sunkist check out:  
[SunkistSoda.com](http://SunkistSoda.com)

The Sunkist Growers Association has marketed the Sunkist trademark for more than 95 years. It is one of the best-known trademarks in the world.

General Cinema Corporation, a large theater operator and soft drink bottler, first licensed the use of the Sunkist trademark in a soft drink. The new Sunkist orange soda went into test markets in 1978. The product was so well received by consumers that it was launched nationally in 1979. Soon, Sunkist became the best-selling orange soft drink and sales continued to climb. By 1981, Sunkist was one of the top 10 soft drinks, a first for any orange soda.

The mid-1980s marked many changes for the brand. The Sunkist soda license experienced two ownership and product formulation changes.

In 1988, Cadbury Schweppes acquired the Sunkist orange soda license from Del Monte. Under Cadbury, the Sunkist brand expanded to include diet orange, lemonade, diet lemonade, strawberry, grape, pineapple, peach and fruit punch. In addition to the new flavors, Cadbury set to work optimizing both the Sunkist advertising and the appeal of the packaging. This culminated in new Sunkist packaging graphics launched in 1998.

Sunkist maintains a high level of brand awareness with consumers and is often named as consumers' favorite orange soda. The Sunkist soda license continues as part of Plano, Texas-based Dr Pepper Snapple Group, Inc., an integrated refreshment beverage business marketing more than 50 beverage brands throughout North America.

### What's In a name?

A copywriter from the Lord & Thomas agency coined the name "Sunkissed" for an advertising campaign promoting the Southern California Fruit Exchange. Shortly afterwards, the spelling was changed to "Sunkist" and adopted as the exchange's trademark in 1908.

### Sunkist Pineapple 20 fl oz Bottle

Nutrition Facts	
Serv. Size: 8 fl oz (240 mL)	
Servings: 2.5	
Amount Per Serving	
Calories 120	
% Daily Value*	
Total Fat 0g	0%
Sodium 40mg	2%
Total Carb. 33g	11%
Sugars 33g	
Protein 0g	
*Percent Daily Values are based on a 2,000 calorie diet.	

CARBONATED WATER, HIGH FRUCTOSE CORN SYRUP, CITRIC ACID, NATURAL AND ARTIFICIAL FLAVORS, SODIUM BENZOATE (PRESERVATIVE), ACACIA GUM, GLYCEROL ESTER OF WOOD ROSIN, BROMINATED SOYBEAN OIL, YELLOW 5, YELLOW 6.

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# **EXHIBIT 5**



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## Press Center

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## Press Kit

### Brand Fact Sheet

#### OVERVIEW:

With a brand heritage spanning more than 200 years, Dr Pepper Snapple Group's portfolio includes more than 50 brands and hundreds of flavors of carbonated soft drinks, juices, teas, mixers, waters and other premium beverages.

DPS is the market leader in the flavored carbonated soft drinks (CSD) category, a key player in the fast growing ready-to-drink tea and juice drink markets and boasts the leading portfolio of shelf-stable mixers in the industry.

More than 75 percent of the company's volume is from brands that are either #1 or #2 in their flavor categories.

#### KEY BRANDS:

##### Dr Pepper

Oldest major soft drink in the United States, introduced in 1885 in Waco, Texas

Distinguished by its unique blend of 23 flavors and loyal consumer following

#1 in its flavor category and #2 overall flavored CSD in the U.S.

Flavors include regular, diet, caffeine free and "Soda Fountain Classics" line extensions

##### Snapple

A leading ready-to-drink tea in the U.S.

Includes premium Snapple teas and super premium white, green, red and black teas

Brand also includes premium and super premium juices, juice drinks and recently launched Antioxidant waters

Founded in Brooklyn, New York, in 1972

##### 7UP

#2 lemon-lime CSD in the U.S.

Re-launched in 2006 as the only major lemon-lime CSD with all-natural flavors and no artificial preservatives

Flavors include regular, diet and cherry

The original "Un-Cola," created in 1929

##### Mott's

#1 apple juice and #1 apple sauce brand in the United States

Juice products include apple and other fruit juices, Mott's Plus and Mott's for Tots

Apple sauce products include regular, unsweetened, flavored and organic

Brand began as a line of apple cider and vinegar offerings in 1842

##### Sunkist Soda

#1 orange CSD in the U.S.

Flavors include orange, diet and other fruits

Licensed to DPS as a soft drink by the Sunkist Growers Association since 1986

##### Hawaiian Punch

#1 fruit punch brand in the U.S.

Brand includes a variety of fruit flavored and reduced-calorie juice drinks

Developed originally as an ice cream topping known as "Leo's Hawaiian Punch" in 1934

##### A&W

#1 root beer in the U.S.

Flavors include regular and diet root beer and cream soda

A classic all-American soda first sold at a veteran's parade in 1919

##### Canada Dry

#1 ginger ale in the U.S. and Canada

Brand includes club soda, tonic and other mixers

Created in Toronto in 1904 and introduced in the U.S. in 1919



First carbonated beverage in the world, invented in 1783

Flavors include regular, diet and ruby red

Key ingredient in Canada's popular cocktail, the Bloody Caesar

Mexico's oldest mineral water, founded in 1928

Margaritaville and Rose's lead their respective flavor categories

**OTHER NOTABLE BRANDS:**



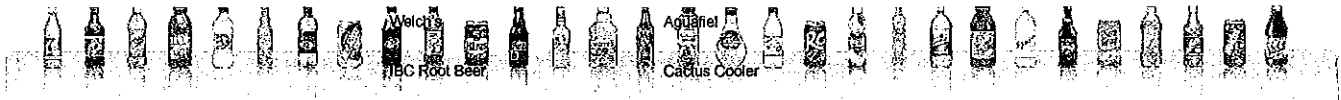
## Carbonated Soft Drinks

KC Cola

SunDrop

Diet Rite

Orangina



## LATEST NEWS RSS

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Crush

Nehi

Tahitian Treat

Hires

C PLUS

Vernors

## Non-Carbonated Beverages

Yoo-hoo

Mistic

Nantucket Nectars

Accelerade

Deja Blue Water

Country Time Lemonade

## Mixers

Holland House

ReaLemon

ReaLime

## Third-Party Brands Distributed by DPS

Monster

Fiji Water

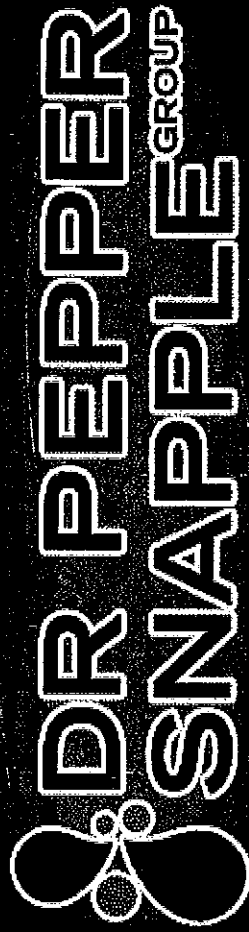
Big Red

[✉ Email Page](#) [🖨 Print](#)



# **EXHIBIT 6**





# Lehman Brothers Back to School Consumer Conference

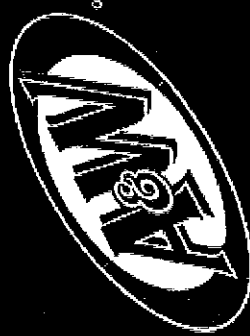
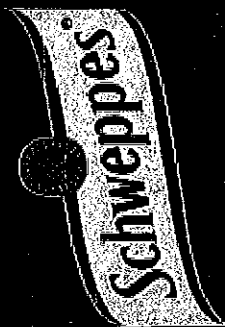
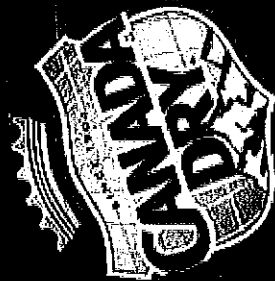
Boston

September 3, 2008



# Portfolio of Powerful Brands

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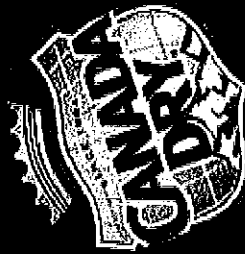




# Ranked #1 or #2 In Their Categories



#1



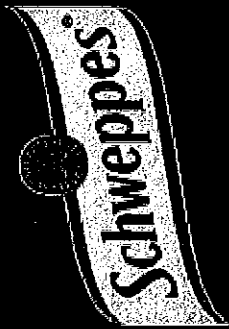
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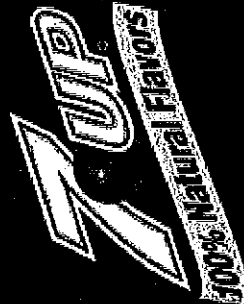
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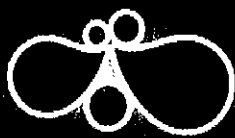


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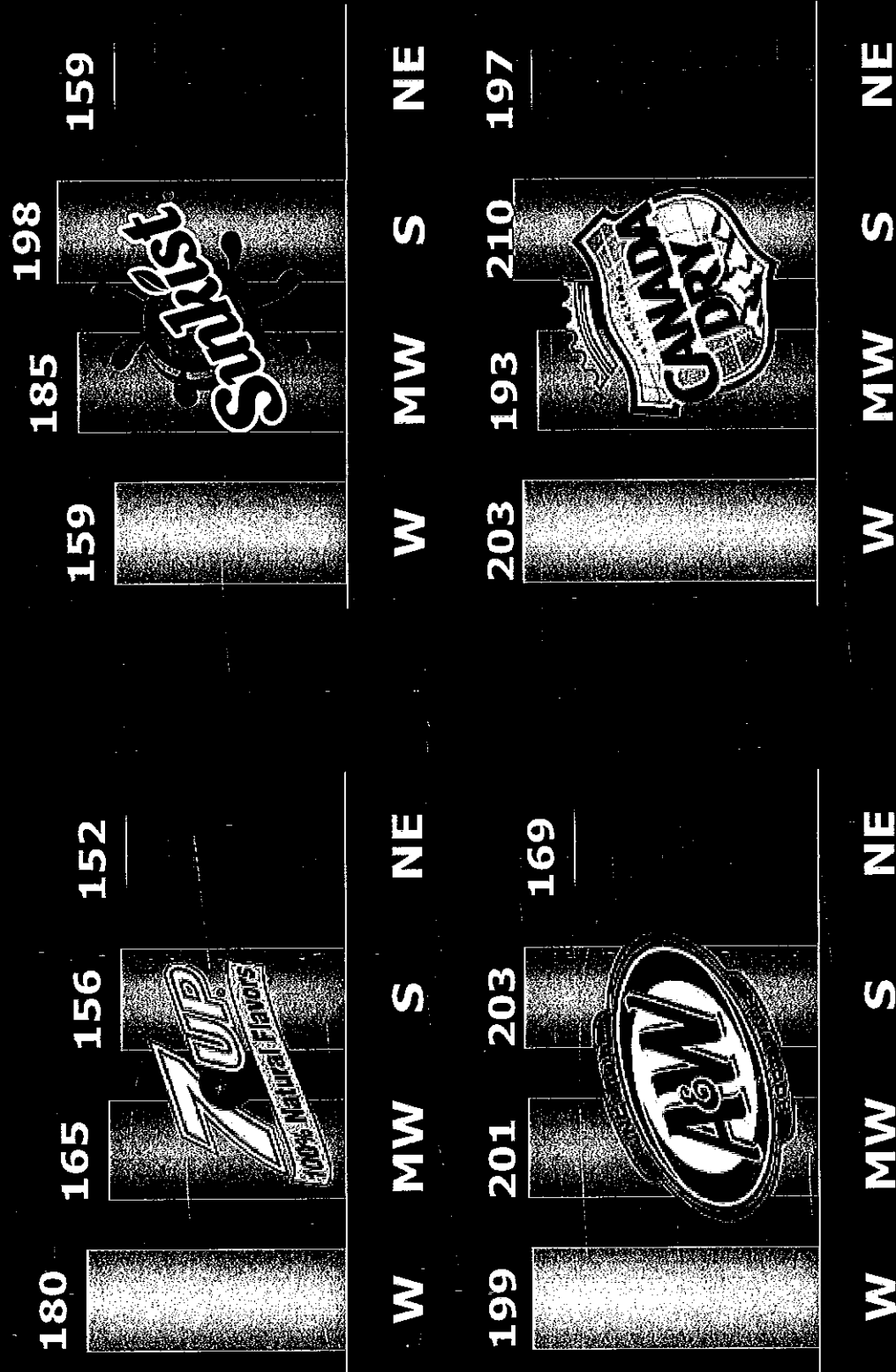
Source: AC Nielsen



# "Core 4" Brands Are Well Regarded Across the U.S.



Brand Equity Index vs Norm





# **EXHIBIT 7**





## **The Pepsi Bottling Group and Dr Pepper Snapple Group Sign Agreement to Expand Crush Brand Distribution**

### **Deal With DPS Aligns and Strengthens PBG's Flavor Portfolio**

SOMERS, N.Y. & PLANO, Texas, Aug 21, 2008 (BUSINESS WIRE) -- The Pepsi Bottling Group, Inc. (NYSE: PBG) and Dr Pepper Snapple Group, Inc. (NYSE: DPS) today announced that the companies have signed an agreement to make the Crush beverage portfolio available in the majority of PBG's territories throughout the United States.

"At PBG, we continue to look for ways to strengthen and diversify our product portfolio. This agreement is an important part of our strategy to do so, as it aligns our flavored offerings across the U.S. and Canada," said PBG North America President Rob King. "The addition of Crush greatly enhances our position in the flavored soft drink category, as it's a terrific brand with broad consumer appeal and attractive growth prospects."

Jim Johnston, DPS President of Sales, said: "PBG already has a proven track record when it comes to building and enhancing Crush, having helped us grow the brand into one of the leading flavored soft drinks in Canada. With flavors playing an increasingly important role in the carbonated soft drink category, we're confident that together we can repeat that success in the U.S. and make Crush a popular national brand available to more consumers in more outlets. Simply put, it's a brand with tremendous untapped potential."

Under the terms of the agreement, PBG will have a perpetual license to manufacture, sell and distribute the brand, which includes such flavors as Orange Crush, Diet Orange Crush, and Grape Crush, in about 80 percent of its territories throughout the United States. The agreement is effective immediately and PBG will begin distribution in early 2009. Financial terms were not disclosed.

The Crush brand is currently available in less than 40 percent of the U.S. The agreement with PBG will nearly double its market penetration, positioning the brand well for future growth.

Flavored carbonated soft drinks now account for almost half of all carbonated soft drink (CSD) sales in the U.S., and Orange Crush and Diet Orange compete in the fourth largest segment of the flavor category. Orange and grape flavors represent a five percent share of the CSD market in the U.S.

Crush has been a fixture in the CSD space for decades, with tremendous name recognition among consumers. Market research shows that three out of four Americans are aware of the brand.

#### **About PBG**

The Pepsi Bottling Group, Inc. (NYSE: PBG) is the world's largest manufacturer, seller and distributor of Pepsi-Cola beverages. The company distributes a portfolio of products that includes some of the biggest brands in the beverage industry, including Pepsi, Diet Pepsi, Mountain Dew, Sierra Mist, Lipton Iced Tea, Aquafina, Sobe Life Water, Propel, G2 from Gatorade, Starbucks Frappuccino and AMP. Based in Somers, NY, PBG had annual sales of nearly \$14 billion in 2007 and has approximately 70,000 employees spread across the U.S., Canada, Greece, Mexico, Russia, Spain and Turkey. The company operates 100 manufacturing facilities and more than 500 distribution centers. In the U.S., PBG has the exclusive right to manufacture, sell and distribute Pepsi-Cola beverages in all or a portion of 41 states and the District of Columbia. For more information, please visit [www.pbg.com](http://www.pbg.com).

#### **About DPS**

Dr Pepper Snapple Group, Inc., (NYSE: DPS) is an integrated refreshment beverage business marketing more than 50 beverage brands to consumers throughout North America. In addition to its flagship Dr Pepper and Snapple brands, the company's portfolio includes 7UP, Mott's, A&W, Sunkist Soda, Hawaiian Punch, Canada Dry, Schweppes, Squirt, RC Cola, Diet Rite, Penafiel, Rose's, Yoo-hoo, Clamato, Mr & Mrs T and other well-known consumer favorites. Based in Plano, Texas, Dr Pepper Snapple Group employs approximately 20,000 people and operates 24 bottling and manufacturing facilities and more than 200 distribution centers across the United States, Canada, Mexico and the Caribbean. For more information, please visit <http://www.drpeppersnapple.com>.

#### **Forward-Looking Statement**



Statements made in this press release that relate to future performance or financial results of either PBG or DPS are forward-looking statements which involve uncertainties that could cause their respective actual performance or results to materially differ. Neither PBG nor DPS undertakes any obligation to update any of these statements. Readers are cautioned not to place undue reliance on these forward-looking statements, which speak only as to the date hereof. Accordingly, any forward-looking statement, with respect to PBG, should be read in conjunction with the additional information about risks and uncertainties set forth in PBG's Securities and Exchange Commission reports, including PBG's annual report on Form 10-K for the year ended December 29, 2007, and with respect to DPS, should be read in conjunction with the additional information about risks and uncertainties set forth in DPS Securities and Exchange Commission Filings, including DPS' registration statement on Form 10 filed April 22, 2008.

SOURCE: The Pepsi Bottling Group, Inc.

Press:

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# **EXHIBIT 8**



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## Our Brands



## Crush

Choose your brand: [Crush](#)

### ORANGE REFRESHMENT SINCE 1916

In 1916, Clayton J. Howell, president and founder of the Orange Crush Company, partnered with California chemist Neil C. Ward to incorporate the company. Ward, a beverage and extract chemist, perfected the process of blending ingredients to create the exclusive formula that yielded the zesty, all-natural orange flavor of Orange Crush. J.M. Thompson of Chicago is recognized as the original inventor of Orange Crush in 1906.

C. J. Howell was not new to the soft drink business, having earlier introduced Howell's Orange Julep. Soft drinks of the time often carried the surname of the inventor along with the product name. Howell sold the rights to use his name in conjunction with his first brand, his partner, Ward, was given the honors and Crush was first premiered as "Ward's Orange Crush."

Orange Crush was the first flavor produced by the company and others followed. Lemon Crush and Lime Crush were introduced in a line known as "the Crushes" within a few years of the brand's creation. Grape Crush was introduced in 1960, Cherry Crush in 1962 and Pineapple Crush in 1966.

In 1989, Cadbury Beverages acquired Crush USA from Procter & Gamble Co. Colorful new packaging graphics, introduced in 1991, and new Crush Tropical Punch and Crush Peach, introduced in 1992, extended the Crush flavor tradition in the '90s.

Today, Crush is part of Dr Pepper Snapple Group, Inc., an integrated beverage business marketing more than 50 beverage brands throughout North America.

#### What's in a name?

Clayton J. Howell included the word "crush" in the original soft drink's name to refer to the process of extracting oils from oranges.

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# **EXHIBIT 9**

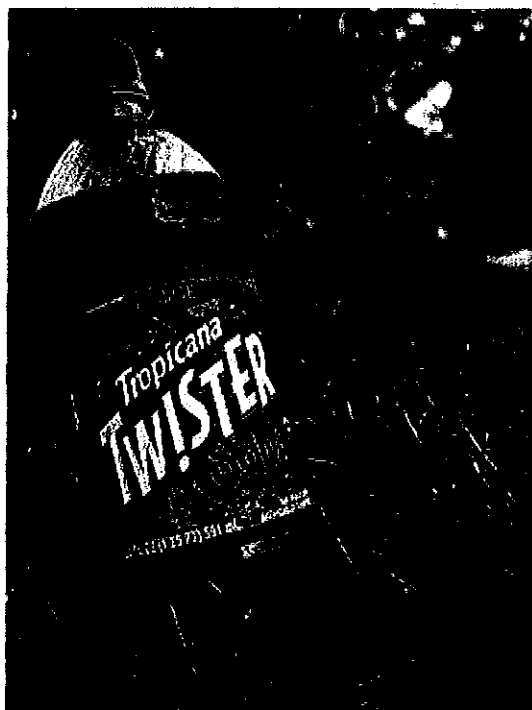












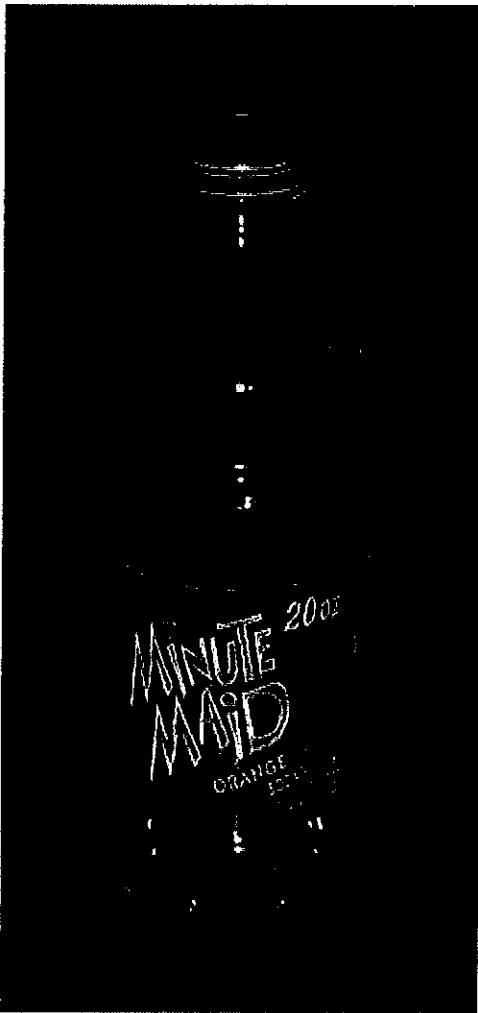














# **EXHIBIT 10**



**CRUSH** by **WELCOME**  
CRUSH is located  
in Boca Raton, FL

## Monday Circle Lunch

MenuPages

1174834



# **EXHIBIT 11**



**Int. Cl.: 43**

**Prior U.S. Cls.: 100 and 101**

**United States Patent and Trademark Office**

**Reg. No. 3,269,628**

**Registered July 24, 2007**

**SERVICE MARK  
PRINCIPAL REGISTER**

**CRUSH 29**

CAPITOL CITY RESTAURANTS, INC. (CALI-  
FORNIA CORPORATION)  
1687 EUREKA ROAD, SUITE 200  
ROSEVILLE, CA 95661

THE MARK CONSISTS OF STANDARD CHAR-  
ACTERS WITHOUT CLAIM TO ANY PARTICULAR  
FONT, STYLE, SIZE, OR COLOR.

FOR: RESTAURANT SERVICES, IN CLASS 43  
(U.S. CLS. 100 AND 101).

SN 78-652,034, FILED 6-16-2005.

FIRST USE 1-18-2007; IN COMMERCE 1-28-2007.

THEODORE MCBRIDE, EXAMINING ATTORNEY



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

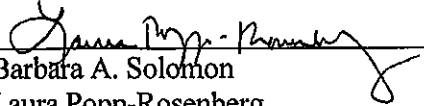
DR PEPPER/SEVEN UP, INC.,	-----X	
Opposer/Petitioner,	:	
	:	
- against -	:	<u>Consolidated Proceedings</u>
	:	Opposition No. 91180742
	:	Cancellation No. 92048446
KRUSH GLOBAL LIMITED,	:	
	:	
Applicant/Registrant.	:	

**STIPULATION TO TAKE DEPOSITION OF JAMES LEARMOND OUTSIDE  
APPLICANT'S TESTIMONY PERIOD**

The above-captioned parties to these consolidated proceedings, by and through their undersigned counsel, hereby stipulate to extend the deadline for Opposer/Petitioner to conduct the oral cross-examination deposition of James Learmond from July 30, 2009 to July 31, 2009 or as otherwise agreed to between the parties.

Dated: July 30, 2009  
New York, New York

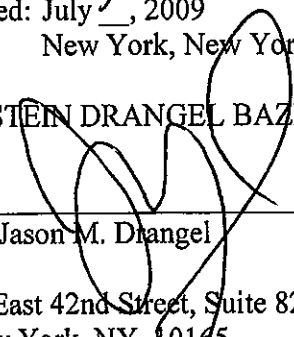
FROSS ZELNICK LEHRMAN & ZISSU, P.C.

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*Attorneys for Opposer/Petitioner*

Dated: July <sup>30</sup>, 2009  
New York, New York

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*Attorneys for Applicant/Registrant*



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

-----X	:	
DR PEPPER/SEVEN UP, INC.,	:	
	:	
Opposer/Petitioner,	:	<u>Consolidated Proceedings</u>
	:	Opposition No. 91180742
- against -	:	Cancellation No. 92048446
	:	
KRUSH GLOBAL LIMITED,	:	
	:	
Applicant/Registrant.	:	
-----X		

**STIPULATION REGARDING SUBMISSION OF DECLARATION  
IN LIEU OF CROSS-EXAMINATION  
AND SUPPLEMENTAL TRIAL DECLARATION OF WILLIAM C. WRIGHT**

The above-captioned parties to these consolidated proceedings, by and through their undersigned counsel, hereby stipulate to the submission of the attached "Trial Declaration on Cross Examination of William C. Wright" in lieu of oral cross-examination of said witness. The parties further stipulate that should the attached declaration be rejected by the Board as evidence or otherwise not made part of the evidentiary record in these proceedings by the Board, the Trial Declaration of William C. Wright and all exhibits thereto, submitted on behalf of Applicant/Registrant Krush Global Limited on July 15, 2009, shall be stricken from the record and not considered in these proceedings (except to the extent such exhibits are validly entered into evidence in some other manner).

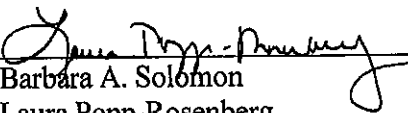
The above-captioned parties to these consolidated proceedings, by and through their undersigned counsel, also hereby stipulate to the submission out of time of the attached "Supplemental Trial Declaration of William C. Wright." Opposer/Petitioner Dr Pepper/Seven Up, Inc. ("Opposer") waives cross-examination of Mr. Wright in connection with the Supplemental Trial Declaration of William C. Wright. The parties further stipulate that the Supplemental Trial Declaration of William C. Wright should not be stricken from the record in



the event the Trial Declaration on Cross Examination of William C. Wright is rejected by the Board as evidence or otherwise not made part of the evidentiary record in these proceedings by the Board. Other than as expressly provided herein, Opposer reserves all right to object to the Supplemental Trial Declaration of William C. Wright and the documents attached thereto on all grounds, including both procedural and substantive.

Dated: July 30, 2009  
New York, New York

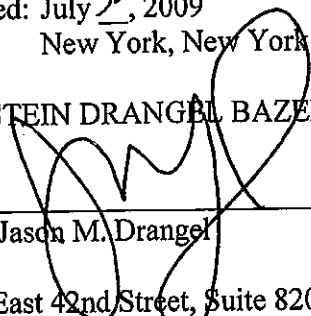
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*Attorneys for Opposer/Petitioner*

Dated: July <sup>30</sup>, 2009  
New York, New York

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*Attorneys for Applicant/Registrant*



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

-----X	:	
DR PEPPER/SEVEN UP, INC.,	:	
	:	
Opposer/Petitioner,	:	<u>Consolidated Proceedings</u>
	:	Opposition No. 91180742
- against -	:	Cancellation No. 92048446
	:	
KRUSH GLOBAL LIMITED,	:	
	:	
Applicant/Registrant.	:	
-----X		

**TRIAL DECLARATION ON CROSS-EXAMINATION OF WILLIAM C. WRIGHT**

WILLIAM C. WRIGHT declares under penalty of perjury as follows:

1. I am an attorney with the law firm of Epstein Drangel Bazerman & James, LLP.
2. I submit this declaration in lieu of an oral cross-examination and declare that had I been cross-examined as to the contents of the testimony set forth in my trial declaration in these proceedings, dated July 15, 2009 ("First Trial Declaration"), I would have testified as follows.
3. I undertook no research to ascertain whether the information set forth in Exhibits 3, 5, 6 and 7 attached to my First Trial Declaration were accurate as of July 15, 2009, the date of my First Trial Declaration, and I do not know whether the information set forth in the referenced exhibits was in fact accurate as of that date. I assumed the information was accurate given that the documents were downloaded from Opposer's website.
4. I have no personal knowledge what the consumer awareness level was of Opposer's CRUSH mark at the time the information shown in Exhibit 4 attached to my First Trial Declaration was first published or as of July 15, 2009, the date of my First Trial Declaration. Nor do I have personal knowledge how consumer awareness of Opposer's CRUSH mark compared to consumer awareness of the SUNKIST mark at the time the information shown

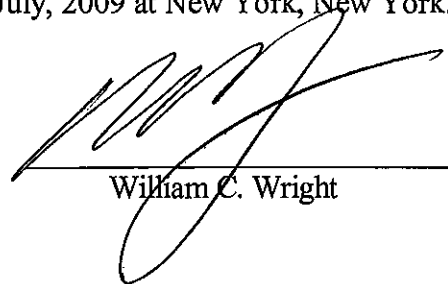


in Exhibit 4 attached to my First Trial Declaration was first published or as of July 15, 2009, the date of my First Trial Declaration.

5. Although I represented in paragraph 7 of my First Trial Declaration that Exhibit 6 attached thereto identified “four core brands” of Opposer, I acknowledge that Exhibit 6 actually uses the terminology “‘Core 4’ Brands.” I do not know what the phrase “‘Core 4’ Brands” means as used by Opposer in Exhibit 6 attached to my First Trial Declaration. Further, I do not know if Opposer refers to any of its products or group of products under the term “four core brands” as referenced in paragraph 7 of my First Trial Declaration.

6. I have no evidence of consumer recognition of the mark CRUSH 29, and I have no evidence that the existence of a restaurant named CRUSH 29 lessens or might lessen consumer recognition of Opposer’s CRUSH mark.

Declared under penalty of perjury this 30<sup>th</sup> day of July, 2009 at New York, New York.



William C. Wright